

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES E. SMITH,  
Plaintiff,

v.

CARL HOLM, et al.,  
Defendants.

No. C 07-0320 MJJ (PR)

**ORDER OF DISMISSAL**

**(Docket Nos. 3, 4, 6)**

Plaintiff, a California prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 in the Eastern District of California. The case was thereafter transferred to this court. Plaintiff alleges that defendants – police officers, prosecutors, and state court employees – violated his constitutional rights during the course of his state court criminal charges.

A federal court must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer, or employee of a governmental entity. See 28 U.S.C § 1915A(a). This court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See id. at § 1915A(b)(1),(2). Pro se pleadings must be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

The claims plaintiff raises in the instant action were raised in an earlier action he filed

1 in this court, which case has since been dismissed. See Smith v. Holm, et al., No. C 06-  
2 5992 SI (PR). Duplicative or repetitious litigation of the same causes of action brought by  
3 prisoners seeking leave to proceed in forma pauperis is subject to dismissal under 28 U.S.C.  
4 § 1915(e) as malicious. See Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988).  
5 Similarly, an in forma pauperis complaint that merely repeats pending or previously litigated  
6 claims may be considered abusive and dismissed under the authority of § 1915. See Cato v.  
7 United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); Bailey, 846 F.2d at 1021. In this  
8 action, plaintiff has for a second time brought the same claims, against the same defendants,  
9 regarding their alleged destruction of papers relating to his habeas action in the Eastern  
10 District of California. Because this action is duplicative of plaintiff's earlier case, this  
11 action is hereby DISMISSED.

12 In light of this dismissal, the motion for a mandatory scheduling conference, and the  
13 motions for leave to proceed in forma pauperis are DENIED; no fee is due.

14 This order terminates docket numbers 3, 4, 6, and any other pending motions.

15 The Clerk shall close the file.

16 IT IS SO ORDERED.

17 DATED: 7/11/07

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MARTIN J. JENKINS  
19 United States District Judge  
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